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## **EXECUTIVE CLEMENCY GUIDELINES**

**Issued by Governor Deval L. Patrick**

**May 21, 2007**

### **I. Introduction**

To the Advisory Board of Pardons and Other Interested Parties:

The Governor's power to grant executive clemency, including pardons and commutations, derives from Article 73 of the Amendments to the Constitution of the Commonwealth. Article 73 provides:

The power of pardoning [offenses], except such as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of [the governor's] council, provided, that if the [offense] is a felony the general court shall have power to prescribe the terms and conditions upon which a pardon may be granted; but no charter of pardon, granted by the governor, with advice of the [the governor's] council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the [offense] or [offenses] intended to be pardoned.

The grant of executive clemency is primarily intended to remove barriers that are often associated with a criminal record or sentence, thereby facilitating the reintegration of the petitioner into the community of the law abiding. Executive clemency should not be considered a routine, post-conviction remedy, but rather is warranted only in rare and exceptional circumstances. The grant of executive

clemency is best made by those public officials best equipped to make informed judgments on the persons seeking relief. These guidelines are established to guide the actions of the Advisory Board of Pardons (“Advisory Board”) in the exercise of its responsibility under 120 CMR §§ 901 and 902 to advise the Governor.

## **II. Purpose and Applicability of the Guidelines**

A. These guidelines reflect merely the threshold requirements for the consideration of executive clemency. The determination of whether such relief will be granted lies preliminarily with the Advisory Board, and ultimately with the Governor subject to the advice of the Governor’s Council. This determination will be made after a thorough review of the merits of the petition and the recommendation of the Advisory Board.

B. These guidelines are applicable to all executive clemency determinations that are made during the Patrick administration. This includes determinations for any pending petitions filed during a prior administration.

C. The guidelines contained herein are advisory only. They create no enforceable rights in the petitioners, nor do they restrict the powers granted to the Governor pursuant to Article 73 of the Amendments to the Constitution of the Commonwealth.

## **III. Minimum Eligibility Requirements**

### **A. Pardons**

Pardon relief will, in general, be granted to those petitioners who have demonstrated a substantial period of good citizenship subsequent to the criminal offense and have a compelling need for a pardon. The Governor will give serious consideration to pardon requests where:

1. The petitioner has neither been convicted nor confined under sentence during the past 15 years in the case of felonies, or 10 years in the case of misdemeanors. Particularly compelling

circumstances or needs may, in rare cases, justify relaxation of these time limitations.

2. The petitioner has demonstrated “good citizenship” during such periods, which shall mean both specific achievements and incident-free behavior. (Dispositions which are not exculpatory, such as continuances without a finding, filed charges, or non-contested pleas, may not be considered “incident-free” behavior. In cases that resulted in dismissed charges, petitioners must inform the Advisory Board as to the circumstances that led to the dismissal, and the Advisory Board may conduct any necessary investigation of such a matter.) An individual's demonstrated ability to lead a responsible and productive life for a significant period after conviction or release from confinement is strong evidence of rehabilitation and worthiness for pardon. Periods of successful parole or probation may be counted toward the good citizenship period, but the parole and probation term must be successfully completed prior to the filing of a pardon petition. (The petitioner shall include, along with the petition, a letter from the parole officer or the probation officer verifying successful completion of supervision.)

3. To inform the “good citizenship” determination, a petitioner shall disclose: any and all restraining orders taken out against the petitioner in the last five years, including the date the order issued, the name of the court that issued the order, the docket number, and the name of party who requested the order. The petitioner shall also disclose: any court orders issued against the petitioner for civil infractions (*e.g.* contempt orders) in the last five years, including the date the order issued, the name of the court that issued the order, the docket number, and the caption of the case. If any such order has entered against the petitioner in the five years previous to the date of the petition, the Advisory Board shall administratively close the petition without prejudice to reapplication.

4. In addition to meeting the above-referenced threshold requirements, the petitioner must demonstrate a verified, compelling, and specific need for a pardon. Where a petitioner has other adequate administrative or judicial remedies, the need for a pardon will not generally meet the “compelling” standard.

5. Where the petitioner states that the “compelling need” for a pardon is to obtain a firearm (as defined in G.L. c. 140, § 121) for employment, the Advisory Board shall obtain written confirmation from the petitioner’s potential employer that the petitioner’s employment is contingent upon the ability to carry a firearm. (The petitioner must submit any information requested by the Advisory Board to satisfy this requirement.) The petitioner must also submit written verification from the appropriate law enforcement official which indicates that if the petitioner were granted a pardon, he or she would approve a firearm license that does not restrict the pardoned individual from carrying, transporting, possessing, and/or receiving firearms. The Advisory Board must consult with the Firearms Licensing Review Board (FLRB) and confirm whether the Chief of Police would grant a firearm license in the absence of the conviction.

6. The fact that a petitioner is seeking a pardon in order to obtain or restore particular employment which necessitates the use of a firearm will not alone meet the “compelling need” requirement.

7. As a general policy, the Governor will seldom, if ever, grant a pardon for the purposes of obtaining a firearm permit to petitioners who evidence a history of emotional or mental health problems, or to petitioners who have been convicted of a crime which involved any of the following:

- a. the use of a firearm;
- b. violence, and a sentence of incarceration was imposed;
- c. more than one felony crime, arising out of separate transactions, whether or not the transactions were for crimes of violence;
- d. rape or kidnapping;
- e. the distribution of controlled substances;
- f. a serious breach of the public trust;

- g. organized crime or large scale criminal conspiracy;
- h. an act of terrorism;
- i. domestic violence;
- j. sexual abuse;
- k. assault and battery on a child; or
- l. stalking.

8. Where a petitioner states that the “compelling need” for a pardon is to obtain a particular license or employment, the petitioner is obligated to provide written verification of the petitioner’s specific compelling need. This written verification shall be a letter of verification or rejection from an employer and/or a licensing authority, which indicates that he or she will not be hired and/or not approved for a license unless a pardon has been granted. The need for a pardon will generally not be found to be compelling where other provisions of the law furnish an appropriate remedy or relief for the petitioner.

9. The Advisory Board will encourage petitioners who qualify for sealing of their records under G.L. c. 276, § 100A *et seq.* to seek that relief from the Commissioner of Probation in lieu of a pardon.

10. The report and recommendation of the Advisory Board to the Governor shall include the following:

- a. a duplicate of the registration with the Secretary of State filed by the petitioner’s counsel or other representative pursuant to G.L. c. 127, § 167;
- b. written communication from at least three persons, other than the petitioner or a member of the petitioner’s family, verifying the period of good citizenship, and, where applicable, verification from at least one other source of the compelling and specific need for a pardon;

- c. a description of the circumstances underlying each offense and conviction for which a pardon is sought;
- d. the names of the panel members or hearing officer who conducted the Advisory Board's hearing;
- e. copies of any dissenting opinions filed in opposition to pardon relief by members of the panel;
- f. the names and addresses of those persons who have advanced an interest either in favor of, or in opposition to, pardon relief, along with the substance of their testimony, statements or evidence;
- g. a statement explaining why a pardon is being recommended, and where it is not, a description of those actions the petitioner should take to maximize the potential for favorable consideration in the future;
- h. a statement from the Advisory Board that the petitioner has not been convicted of any crime, or admitted to facts sufficient to warrant a finding of guilty, since the most recent conviction from which the pardon is sought; and
- i. a statement that the Advisory Board or its staff has informed the petitioner that federal and state law prohibit persons convicted of the offenses enumerated in G.L. c. 140, § 129B from obtaining a firearm permit where the Governor's pardon restricts the individual from carrying, transporting, possessing, and/or receiving firearms.

11. The Governor may, at any time before making a final determination, return a petition to the Advisory Board for further action or to request further information.

12. There is no constitutional or statutory authority for the Governor to grant a posthumous pardon. A pardon is intended to remove barriers that are associated with a criminal record, and to thereby facilitate the reintegration of the petitioner into the community of the law abiding. Because these goals cannot be obtained in the case of a decedent petitioner, and name clearing alone does not meet the compelling need standard applied to living petitioners, such pardons will not be awarded. Instead, worthy applications for a proclamation or a resolve may be granted in the Governor's discretion to remove stigma and disgrace from the name of a decedent petitioner when the Advisory Board determines that the petitioner's factual innocence can be established by clear and convincing evidence. In all such cases, the Advisory Board shall recommend to the Governor an appropriate course of action.

## **B. Commutations**

1. A commutation of sentence reduces the period of incarceration; it does not imply forgiveness of the underlying offense, but simply remits a portion of the punishment. It has no effect upon the underlying conviction and does not necessarily reflect upon the fairness of the sentence originally imposed. The petitioner bears the responsibility of demonstrating, by clear and convincing evidence, that:

- a. the petitioner has made exceptional strides in self-development and self-improvement and would be a law-abiding citizen;
- b. the petitioner is suffering from a terminal illness or severe and chronic disability, which has been verified by a licensed medical doctor, that would be substantially mitigated by release from prison;
- c. the petitioner's further incarceration would constitute gross unfairness in light of the basic equities involved, including: (i) the severity of the sentence received in relation to sentences received by other equally culpable and similarly situated defendants; (ii) the extent of petitioner's participation in the offense; or (iii)

a history of abuse suffered by the petitioner at the hands of the victim which significantly contributed to or brought about the offense; or

- d. the petitioner has rendered meritorious service to the government, *e.g.*, cooperation with an investigation or prosecution that has not already been rewarded by other official action.

2. The Governor will very rarely, if ever, grant commutation relief where:

- a. there is an adequate administrative or judicial remedy available;
- b. the petitioner has been convicted, but not yet sentenced;
- c. the relief sought is from a lengthy sentence which is not yet being served;
- d. the petitioner has not yet progressed from a 24-hour maximum security confinement status (this does not apply to persons confined in protective custody);
- e. the petitioner has been convicted of a sex crime and has not participated in sex offender treatment;
- f. the petitioner has been convicted of a crime related to substance abuse and has not participated in an appropriate treatment program;
- g. the petitioner is on probation or parole; or
- h. the Advisory Board advises against the granting of such relief.



3. The Governor generally will not consider granting commutation relief in first-degree murder cases until the petitioner has served a minimum of 15 years. This recognizes that persons convicted of first-degree murder are not eligible for parole, and that persons convicted of second-degree murder only become eligible for parole after they have served 15 years of their sentence.

4. In homicide cases, before the Advisory Board recommends any action to the Governor, it shall publish notices of its public hearing on the petitioner's application for a commutation at least once a week for two consecutive weeks prior to the date of public hearing. The notice should appear in a newspaper of general circulation in the county in which the crime occurred. The Advisory Board shall retain a copy of the notice as proof of publication.

5. The report and recommendation of the Advisory Board to the Governor must include the following:

- a. a duplicate of the registration with the Secretary of State filed by the petitioner's counsel or other representative pursuant to G.L. c. 127, § 167;
- b. in homicide cases, a copy of the published notices of the Advisory Board's public hearing on the petitioner's application for commutation;
- c. a summary of the evidence presented at a public hearing, including the support petitioner has received both in the institution and in the community, the nature and extent of any opposition to the petition, and the names and addresses of those persons who have advanced an interest either in favor of, or in opposition to, commutation relief;
- d. an institutional progress report evidencing responsible use of available rehabilitative programs;
- e. where applicable, a description of appropriate community correctional and parole programs available to continue petitioner's rehabilitation;

f. where applicable, a plan for reintegrating the petitioner into community life; and

g. the recommendation and vote of the Advisory Board. Favorable recommendations shall address, in detail, the considerations set forth in paragraphs (1) through (3) above. Unfavorable recommendations of the Advisory Board shall set forth, where appropriate, those actions petitioner should take to maximize the potential for favorable consideration in the future.

6. The Governor approves of the Advisory Board's practice of generally recommending commutation of a sentence to parole eligibility at a future date rather than a present date in order to make petitioners eligible for education, training, and employment programs, pursuant to G.L. c. 127, §§ 48-73, before the petitioner is eligible for parole release.

7. The Governor may, at any time before making a final determination, return a petition to the Advisory Board for further action or to request further information.

#### **IV. Procedural Operations**

1. The Governor will consider petitions for executive clemency that meet these guidelines and have been recommended by the Advisory Board. When the Governor disagrees with the recommendation of the Advisory Board to grant executive clemency, he may, in his discretion and where appropriate, set forth those actions that the petitioner should take to maximize the potential for favorable consideration in the future.

2. Whenever the Advisory Board recommends that the Governor deny a request for executive clemency and the Governor does not disapprove or does not take any other action with respect to the adverse recommendation within 90 days after the date of its submission to the Governor, it shall be presumed that the Governor concurs in that adverse recommendation. After the 90 day period, the Advisory Board shall advise the petitioner and close the case. Once the case is closed, the Advisory Board shall notify the Office of

the Governor's Legal Counsel. A petitioner may not submit another application for pardon relief for one calendar year from the date the case is closed.

3. Whenever the Advisory Board recommends that the Governor grant a request for executive clemency and the Governor does not take any action with respect to the recommendation within one year after the date of its submission to the Governor, it shall be presumed that the Governor disapproves of the recommendation, pursuant to 120 CMR 902.12(2). After the one year period, the Advisory Board shall advise the petitioner and close the case without prejudice to resubmission. Once the case is closed, the Advisory Board shall notify the Office of the Governor's Legal Counsel.

4. Whenever the Advisory Board recommends that the Governor grant a request for executive clemency, the Advisory Board is authorized to withdraw or amend that recommendation before the Governor acts if it receives information adverse to the petition that was not previously known to it.

5. When the Governor approves a petition for a pardon with the advice of the Governor's Council, all officers having possession and control of any record relating to the offenses for which the petitioner received the pardon shall seal all such records in accordance with G.L. c. 127, § 152. The Advisory Board's report and recommendation shall be retained as a public record open to inspection at any reasonable time for a period of 10 years from the date that the original petition was filed with the Advisory Board. G.L. c.127, § 154.

6. In addition to the notice requirements set forth in G.L. c. 127, § 154, prior to any public hearing by the Advisory Board on the petition:

a. the Advisory Board shall notify the Secretary of Public Safety, the appropriate District Attorney and the Attorney General of the pending petition and the scheduling of any clemency hearing; and

b. the Advisory Board shall make every reasonable attempt to notify the petitioner's victim (as defined in G.L. c. 258B, § 1), the victim's immediate family, and the victim's survivors of the pending petition. This notification will be sent by certified mail, return receipt requested, to the last known address of the victim, the victim's immediate family, and the victim's survivors. If such notification fails to result in a response, then the Advisory Board will attempt to notify such persons by personal contact. The Advisory Board shall, in this notification, solicit comments on the petitioner's application for executive clemency and invite the victim, the victim's immediate family, and/or the victim's survivors to appear at the petitioner's hearing. By prior arrangement with the Advisory Board, the victim, the victim's immediate family, and/or the victim's survivors may participate by video or teleconference, or by other available means.

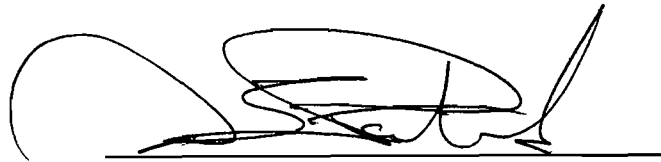
7. All petitioners must provide the Advisory Board and/or the Governor with any and all documents or other materials that the Advisory Board and/or the Governor may request to process the petition. A petitioner's failure to honor such a request may result in the denial of relief.

8. In cases where a petitioner has received a favorable recommendation for executive clemency from the Advisory Board, the Governor may, as part of the exercise of his constitutional discretion, request a petitioner to undergo medical, forensic, psychological or psychiatric examinations under circumstances and in a setting to be established by the Governor. A petitioner's failure to honor such a request may result in the denial of relief.

9. The Governor expressly reserves the right to waive any and all of these non-statutory provisions in any case deemed worthy of special consideration due to extraordinary circumstances.

10. All requests for a waiver of a guideline(s) shall be submitted in writing to the Advisory Board with the petition at the time it is filed. The Advisory Board shall consider all such requests in the first instance. When the Advisory Board recommends both the granting of executive clemency and the request for a waiver of a

guideline(s), those recommendations shall be forwarded for the Governor's consideration with a statement of reasons therefor.

A handwritten signature in black ink, appearing to read 'Deval Patrick', is written over a horizontal line.

DEVAL L. PATRICK  
GOVERNOR